

REMARKS

Applicant requests review of the Final Office Action dated September 25, 2007, finally rejecting claims 1-23, in the above-identified patent application under 35 U.S.C. § 103(a) as being obvious over Taylor, et al. U.S. Patent No. 5,262,710 in view of Slipy, et al. U.S. Patent No. 5,955,700. This rejection essentially restates the rationale in the rejection of the non-final Office Action mailed on April 11, 2007. The review is requested for the following reasons:

Without acquiescing in the appropriateness of the combination of Taylor, et al. in view of Slipy, et al., Applicant submitted a response on June 7, 2007 discussing some of the shortcomings of the proposed combination. Applicant provided reasons for at least some of the areas in which the Examiner had failed to provide teaching in Taylor, et al. in view of Slipy, et al.

However, the Examiner in a Final Action dated September 25, 2007 maintained the rejection of all claims, namely claims 1-23 as being obvious over Taylor, et al. in view of Slipy, et al. The Examiner addressed Applicant's prior arguments on pages 8-11 of the Final Action.

On November 28, 2007, the Examiner Johali A. Torres Ruiz and her supervisor were courteous enough to hold a telephonic interview regarding the status of the claims with the undersigned. While the Examiners indicated that the status of the claims would remain unchanged after the interview, they also indicated that written comments would be considered.

The Examiner rejected claims 1-23 under 35 U.S.C. § 103a as being unpatentable over Taylor, et al. (U.S. Patent 5,262,710) in view of Slipy, et al., U.S. Patent No. 5,955,700. Applicant respectfully urges that independent claim 1 is patentably distinguishable from the applied reference Taylor, et al. in combination with Slipy, et al., as the claimed subject matter would not have been obvious within the meaning of 35 U.S.C. § 103(a).

The Examiner indicated that as to claims 1 and 13, that Taylor teaches a housing (106) having a battery (420) receiving cavity, the cavity being profiled to receive at least a battery therein (Figure 5); electrodes (224) for contacting contacts on the battery (420) (Col. 9, lines 52-

54) for charging the battery (Col. 9, lines 27-31); a gripping member (280 and 290) movable between a locked (386 and 392) and unlocked (498, 504) position, for gripping a battery placed within the cavity (Col. 10, lines 27-32). The Examiner admits that Taylor does not teach the housing comprising an opening through the housing and into the cavity, nor that a gripping member is movable transversely into and out of the housing opening.

Rather, the Examiner indicated that Slipy teaches a housing (302) having a battery (112) receiving cavity (128), the housing (302) comprising an opening through the housing (302) and into the cavity (128) (referring to column 5, lines 20-24). The Examiner indicates that Slipy teaches a gripping member (106) which is movable transversely into and out of the housing opening referring to column 5, lines 17-20. Thus the Examiner indicated that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have had a housing comprising an opening through the housing and into a battery receiving cavity and a gripping member movable transversely into and out of the housing opening in Taylor as taught in Slipy because it is known in the art as an expected successful configuration of gripping member and battery housing.

Applicants believe that Slipy, et al. does not show a gripping member movable transversely into and out of the housing opening. Applicants' claim 1 indicates that the "housing further comprising an opening through said housing and into said cavity". Rather Slipy shows a battery compartment at 128 which is remote from any area where latching mechanism (106) exists. Thus the latching mechanism (106) does not move transversely into and out of a housing opening which communicates with the cavity but rather is journaled on semi-circular notches (150 and 160) and rotates between multiple positions shown in Figures 4-6. Moreover, Slipy has nothing to do with moving between a locked and unlocked position for gripping the battery placed within the cavity but rather holds door cover (102).

The Examiner commented on Applicant's argument that Slipy has nothing to do with moving between a locked and unlocked position for gripping the battery, indicating that Taylor

teaches a gripping member moveable between a locked and unlocked position and that Slipy was used to show a gripping member moveable transversely into and out of the housing and that the rejection is based upon the combination of these references. However, the Examiner is minimizing the point made by Applicant. As Slipy shows only a catch for holding a cover door of a cell phone closed, there is absolutely no teaching, suggestion or motivation for the combination of Taylor and Slipy. One skilled in the art, upon seeing Taylor and Slipy, would not be drawn to use the housing of Taylor and then recognize that the catch of Slipy could be reconfigured to provide a modified catch for the Taylor housing. It is also not believed that Slipy shows a gripping member which is moveable transversely into and out of a cavity as taught and claimed by Applicant. Rather Slipy shows a catch which rotates to rotate a catch and to maintain a battery door closed. Moreover as the catch in Slipy has nothing to do with retention of the batteries, but rather the door, the obviousness of combining the two references Taylor and Slipy vanishes. Only in hindsight could one reconstruct Applicant's invention from Taylor and Slipy.

In a letter dated May 3, 2007 from Margaret Focarino, she instructed the Technology Center Directors to the following guidance when rejecting patent claims under 35 U.S.C. §103(a),

The Court did not totally reject the use of "teaching, suggestion or motivation" as a factor in the obviousness analysis. Rather the Court recognized a showing of "teaching, suggestion or motivation" to combine the prior art to meet the claimed subject matter could provide a helpful insight in determining whether the claimed subject matter is obvious under 35 U.S.C. §103(a).

.....

The Court noted that the analysis supporting a rejection under 35 U.S.C. §103(a) should be made explicit, and that it was "important to identify a reason that would have prompted a person of ordinary skill in the relative field to combine the [prior art] elements" in the manner claimed. The Court specifically stated:

Often it will be necessary...to look to interrelated teachings to multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements

in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. (Emphasis Original).

She closes by indicating that "in formulating rejection under 35 U.S.C. §103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior elements in the manner claimed."

The reasoning suggested above does not exist here, because the two prior art references are inconsistent in their teachings, and even if combined, would not results in Applicant's claimed invention. While Taylor shows a battery charger assembly, the battery as shown at 420 in Figure 3 simply slides into a notch (362). Nothing in Taylor latches the battery in place. On the contrary, Slipy, et al. shows a cell phone, not a charger. Slipy shows only a latching member to latch the battery cover (102), when the latch is remote from the battery compartment and does not move transversely through the housing opening into the battery compartment. Nor does Slipy have a cam operated gripping member as indicated by the Examiner. Actually the Slipy cam works in an opposite manner as in the present invention.

Applicants believe that the Examiner, in formulating a rejection under 35 U.S.C. §103(a) based upon a combination of prior art elements, needs to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. However, as Applicants have pointed out, the prior art references expressly teach why the prior art elements - would not, and could not - have been combined in the manner asserted by the Examiner.

The rejections for the dependent claims are also inconsistent and are a contradictory use of Taylor and Slipy.

In respect of claim 2, the Examiner indicates that Slipy shows a gripping assembly moved by a cam assembly. However, the Slipy cam is used to urge the door 102 open, not closed. As discussed in Slipy, Column 3, lines 57-61, "Cam 206 has a cam diameter greater than the circular opening diameter of the circular opening formed by semicircular notches 152 and

162." And in Column 4, lines 52-64, Slipy indicates that "[b]attery door 102 may be detached from the housing unit 302 as follows. ... The instrument is rotated to rotate latching mechanism 106 in a counterclockwise direction...[and c]am surface 216 contacts and urges latch 108 outwards from opening 164 as in Figure 5."

The Examiner in paragraph 30 responds to Applicant's argument that Slipy does not show a cam which is used to urge the door closed. The Examiner indicates that Slipy teaches a cam as used to urge the door closed. This is simply not the case. A complete review of Slipy shows that the cam is only used to urge the door open, the cam has nothing to do with urging the door closed. The specification at Column 4, lines 42-45 which the Examiner refers to, indicates that the catch 118 rides cam surface further until catch 208 engages and locks with catch 118. This has nothing to do with camming or urging the door closed, as described above. The cam is only used in its eccentric shape to open the door once it has been released. The Slipy cam 206 has a diameter greater than the circular opening diameter of the circular opening formed by semicircular notches 152 and 162, therefore, when rotated, pushes against latch 118, and detaches the battery door 102 from the housing unit 302. The cam surface 216 contacts and urges latch 108 outwards from opening 164 as in Figure 5.

The Examiner also rejected claim 3 although no reference shows a gripping member moveable transversely into and out of a housing where the gripping member is comprised of a gripper portion attached to an insert. The Examiner indicated that Taylor, et al. teaches a gripper portion (280 or 290) attached to an insert (176).

The Examiner also rejected claim 4 indicating that Slipy shows a rotatable cam, however as mentioned above, this cam does not act to grip the battery but rather to open the cell phone cover. The examiner now says that Slipy, et al. shows a cam assembly 106 comprised of a rotatable cam 216 which operates within a follower groove of an insert 118. However, the Examiner has used the prior art inconsistently, namely, Applicant's same claim element "insert" referred to in claims 3 and 4 is now referred to as Taylor's 176 (with respect to claim 3) and

Slipy's 118 (with respect to claim 4). Moreover, the Examiner uses Slipy's element 118 for another and different element in the rejection of claim 9, see Examiner's paragraph 34.

The Examiner rejected claim 5 although as mentioned in claim 3, no reference shows a gripper member which is moveable transversely and has a rubber-like material molded to a plastic insert. The Examiner indicates that Slipy teaches a gripper member with a rubber-like material integrally connected to a plastic insert. This is a mischaracterization of Slipy. Slipy indicates that the gripper member is plastic at Column 3, lines 9-11 and in fact, the entire member 202 is a molded plastic member. There are no such rubber-like material elements attached to an insert in Slipy. Moreover, the Examiner now introduces yet a third insert and says that Slipy et al. shows a rubber-like gripper 208 molded to an insert, referring now to either item 212 or 214.

The Examiner rejected claim 6 now indicating that Taylor includes a U-shaped insert where the leg portions 296 and 302 are flanking the insert 176 and where the closed end 124 of the U provides the gripping function. These statements are simply mischaracterizations of both references. There is no U-shape to the arms of Taylor, et al., they are straight as shown in Taylors Figure 2. Secondly, in paragraphs 5 and 7 of the final rejection the examiner indicates that the legs 296, 302 provide the gripping function, and now in paragraph 10, the Examiner indicates that the gripping function is performed by the end of the housing 124.

As to claim 7, the Examiner reverts back to gripping members being items 280 and 290 and indicates that the spring stretches the remainder of the gripper members. Now the Examiner makes yet another combination saying that the cam of Slipy could be used to stretch the gripper member in Taylor. This is clearly erroneous. Given that claim 7 would include the limitations of claims 1, 3, 5, and 6 the Examiner has introduced 3 different inserts (Taylors 176, Slipy 118, and Slipy 212 or 214) and has contradictory uses of Taylor, et al. and Slipy et al in all of these rejections. As to claim 1 the Examiner has said that Slipy shows a cam which could be used to hold batteries, and now with respect to claim 7, the Examiner indicates that it would be obvious

from Slipy et al. to somehow teach that a cam assembly would stretch the gripping members in Taylor (280 and 290) in order to hold the batteries. This is complete conjecture on the part of the Examiner.

As to claims 8 and 9 where the cam and the follower groove are contoured for a nested and detented position, respectively, nothing in Slipy shows contour for a nested position. Rather the element 202 simply rotates within its semicircular grooves to locked and unlocked positions. The Examiner shows Figure 6 as indicating a detented position, however this is simply for the locked position not a detented position.

As to claim 10, Taylor does not show a battery receiving cavity profiled to receive the battery connected to its handheld appliance. As to claim 11, the Examiner indicates that Taylor teaches guides 362 and 368, however these guides as referred to by the Examiner are on the same element which the Examiner previously referred to as to the gripping members.

Finally, as to claim 12, the Examiner indicates that Slipy teaches a battery receiving cavity including guide grooves, however as mentioned above, Slipy merely shows a cell phone for receiving batteries for the operation of the cell phone not a battery charger as defined in dependent claim 12 incorporating all of the limitations of the intermediate claims.

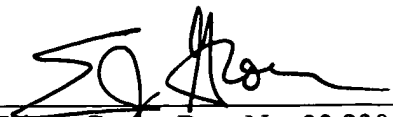
As to claims 14-23, the same arguments apply as to dependent claims 2-12.

Given all of the amendments and remarks, Applicants believe that claims 1-17 are in condition for allowance and respectfully request early passage thereof.

If necessary to effect a timely response, please consider this paper a request for an extension of time, and charge any shortages in fees, or apply any overpayment credits, to Baker & Daniels' Deposit Account No. 02-0387 (72249.90053). However, please do not include the payment of issue fees.

Application Serial No. 10/757,146
Amendment Dated December 21, 2007
Reply to Final Office Action of September 25, 2007

Respectfully submitted,


Eric J. Groen, Reg. No. 32,230
Baker & Daniels
300 North Meridian, Suite 2700
Indianapolis, IN 46204
Telephone: (317) 237-1115
Fax: (317) 237-1000

I hereby certify that this correspondence is
being deposited with the U.S. Postal Service as
First Class Mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450 on

December 21, 2007
Date


Eric J. Groen, Reg. No. 32,230